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THE WELLPOINT COMPANIES, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSUE TALAMANTEZ, an individual,
on behalf of himself and on behalf of all
persons similarly situated,
Plaintiff,
v.
THE WELLPOINT COMPANIES, INC.,
a Indiana Corporation; and Does 1
through 50, Inclusive,
Defendants.

Case No. CV12-08058 RGK (JCx)
(Assigned to Hon. R. Gary Klausner)

**DEFENDANT WELLPOINT'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

Complaint Filed: August 3, 2012

1 Defendant The WellPoint Companies, Inc. for itself alone and no other
2 defendant, hereby answers the unverified Complaint of Plaintiff Josue Talamantez
3 (“Plaintiff”) in accordance with the following numbered paragraphs :
4

5 **THE PARTIES**

6 1. WellPoint admits that it is a corporation incorporated under the laws
7 of the State of Indiana. The remainder of Paragraph 1 contains conclusions of law
8 as opposed to allegations of fact and, accordingly, no answer is required.

9 2. WellPoint admits that it is a health benefits company. The remainder
10 of Paragraph 2 contains conclusions of law as opposed to allegations of fact and,
11 accordingly, no answer is required. To the extent that Paragraph 2 purports to
12 contain any allegations of fact, WellPoint denies the allegations contained in
13 Paragraph 2.

14 3. WellPoint admits that Plaintiff was employed at WellPoint in
15 California from 2003 to 2012 as a non-exempt hourly employee and received
16 additional compensation through WellPoint’s Annual Incentive and/or Quarterly
17 Incentive Program. The remainder of Paragraph 3 contains conclusions of law as
18 opposed to allegations of fact and, accordingly, no answer is required. To the
19 extent that Paragraph 3 purports to contain any allegations of fact, WellPoint
20 denies the allegations contained in Paragraph 3.

21 4. There are no factual allegations set forth in Paragraph 4 and,
22 accordingly, no response is required. To the extent a response is required,
23 WellPoint admits that Plaintiff seeks to bring a class action on behalf of himself
24 and other individuals employed at WellPoint. WellPoint denies the remaining
25 allegations in Paragraph 4.
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1 5. Paragraph 5 contains conclusions of law as opposed to allegations of
2 fact and, accordingly, no answer is required. To the extent that Paragraph 5
3 purports to contain any allegations of fact, WellPoint denies the allegations
4 contained in Paragraph 5.

5 6. WellPoint admits that certain non-exempt hourly employees received
6 additional compensation through WellPoint's Annual Incentive Program and/or
7 Quarterly Incentive Program. The remainder of Paragraph 6 contains conclusions
8 of law as opposed to allegations of fact and, accordingly, no answer is required.
9 To the extent that Paragraph 6 purports to contain any allegations of fact,
10 WellPoint denies the allegations contained in Paragraph 6.

11 7. Paragraph 7 contains conclusions of law as opposed to allegations of
12 fact and, accordingly, no answer is required. To the extent that Paragraph 7
13 purports to contain any allegations of fact, WellPoint denies the allegations
14 contained in Paragraph 7.

15 8. WellPoint admits that Plaintiff seeks to bring a class action on behalf
16 of himself and other individuals employed at WellPoint and is seeking relief. The
17 remainder of Paragraph 8 contains conclusions of law as opposed to allegations of
18 fact and, accordingly, no answer is required. To the extent that Paragraph 8
19 purports to contain any allegations of fact, WellPoint denies the allegations
20 contained in Paragraph 8.

21 9. WellPoint denies the allegations contained in Paragraph 9.

22 10. Paragraph 10 contains conclusions of law as opposed to allegations of
23 fact and, accordingly, no answer is required.

24 11. Paragraph 11 contains conclusions of law as opposed to allegations of
25 fact and, accordingly, no answer is required. To the extent that Paragraph 11
26 purports to contain any allegations of fact, WellPoint denies the allegations
27 contained in Paragraph 11.
28

THE CONDUCT

12. WellPoint denies the allegations contained in Paragraph 12.

13. WellPoint denies the allegations contained in Paragraph 13.

14. Paragraph 14 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 14 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 14.

15. Paragraph 15 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 15 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 15.

16. WellPoint admits that Plaintiff was employed as a non-exempt hourly employee and received additional compensation through WellPoint's Annual Incentive Program and/or Quarterly Incentive Program. The remainder of Paragraph 16 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 16 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 16.

JURISDICTION AND VENUE

17. Paragraph 17 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 17 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 17.

18. Paragraph 18 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 18 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 18.

THE CALIFORNIA CLASS

19. Paragraph 19 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 19 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 19.

20. Paragraph 20 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required.

21. Paragraph 21 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 21 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 21.

22. Paragraph 22 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 22 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 22.

23. Paragraph 23 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 23 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 23.

24. Paragraph 24 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 24 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 24.

25. Paragraph 25 contains conclusions of law as opposed to allegations of fact and, accordingly, no answer is required. To the extent that Paragraph 25 purports to contain any allegations of fact, WellPoint denies the allegations contained in Paragraph 25.

1 26. Paragraph 26 contains conclusions of law as opposed to allegations of
2 fact and, accordingly, no answer is required. To the extent that Paragraph 26
3 purports to contain any allegations of fact, WellPoint denies the allegations
4 contained in Paragraph 26.

5 27. Paragraph 27 contains conclusions of law as opposed to allegations of
6 fact and, accordingly, no answer is required. To the extent that Paragraph 27
7 purports to contain any allegations of fact, WellPoint denies the allegations
8 contained in Paragraph 27.

9 28. Paragraph 28 contains conclusions of law as opposed to allegations of
10 fact and, accordingly, no answer is required. To the extent that Paragraph 28
11 purports to contain any allegations of fact, WellPoint denies the allegations
12 contained in Paragraph 28.

13 29. Paragraph 29 contains conclusions of law as opposed to allegations of
14 fact and, accordingly, no answer is required. To the extent that Paragraph 29
15 purports to contain any allegations of fact, WellPoint denies the allegations
16 contained in Paragraph 29.

17 30. WellPoint admits that it maintains records of its employees.
18 WellPoint denies the remaining allegations contained in Paragraph 30.

19 **THE CALIFORNIA LABOR SUB-CLASS**

20 31. Paragraph 31 contains conclusions of law as opposed to allegations of
21 fact and, accordingly, no answer is required. To the extent that Paragraph 31
22 purports to contain any allegations of fact, WellPoint denies the allegations
23 contained in Paragraph 31.

24 32. Paragraph 32 contains conclusions of law as opposed to allegations of
25 fact and, accordingly, no answer is required. To the extent that Paragraph 32
26 purports to contain any allegations of fact, WellPoint denies the allegations
27 contained in Paragraph 32.
28

1 33. WellPoint admits that it maintains records of its employees.
2 WellPoint denies the remaining allegations contained in Paragraph 33.

3 34. Paragraph 34 contains conclusions of law as opposed to allegations of
4 fact and, accordingly, no answer is required. To the extent that Paragraph 34
5 purports to contain any allegations of fact, WellPoint denies the allegations
6 contained in Paragraph 34.

7 35. Paragraph 35 contains conclusions of law as opposed to allegations of
8 fact and, accordingly, no answer is required. To the extent that Paragraph 35
9 purports to contain any allegations of fact, WellPoint denies the allegations
10 contained in Paragraph 35.

11 36. WellPoint admits that certain non-exempt hourly employees received
12 additional compensation through WellPoint's Annual Incentive Program and/or
13 Quarterly Incentive Program. The remainder of Paragraph 36 contains conclusions
14 of law as opposed to allegations of fact and, accordingly, no answer is required.
15 To the extent that Paragraph 36 purports to contain any allegations of fact,
16 WellPoint denies the allegations contained in Paragraph 36.

17 37. Paragraph 37 contains conclusions of law as opposed to allegations of
18 fact and, accordingly, no answer is required. To the extent that Paragraph 37
19 purports to contain any allegations of fact, WellPoint denies the allegations
20 contained in Paragraph 37.

21 38. Paragraph 38 contains conclusions of law as opposed to allegations of
22 fact and, accordingly, no answer is required. To the extent that Paragraph 38
23 purports to contain any allegations of fact, WellPoint denies the allegations
24 contained in Paragraph 38.
25
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1 39. Paragraph 39 contains conclusions of law as opposed to allegations of
2 fact and, accordingly, no answer is required. To the extent that Paragraph 39
3 purports to contain any allegations of fact, WellPoint denies the allegations
4 contained in Paragraph 39.

5 40. Paragraph 40 contains conclusions of law as opposed to allegations of
6 fact and, accordingly, no answer is required. To the extent that Paragraph 40
7 purports to contain any allegations of fact, WellPoint denies the allegations
8 contained in Paragraph 40.

9 **FIRST CAUSE OF ACTION**

10 41. WellPoint incorporates the answers contained in the previous
11 paragraphs of this Answer as if fully set forth herein.

12 42. Paragraph 42 contains conclusions of law as opposed to allegations of
13 fact and, accordingly, no answer is required.

14 43. Paragraph 43 contains conclusions of law as opposed to allegations of
15 fact and, accordingly, no answer is required.

16 44. Paragraph 44 contains conclusions of law as opposed to allegations of
17 fact and, accordingly, no answer is required. To the extent that Paragraph 44
18 purports to contain any allegations of fact, WellPoint denies the allegations
19 contained in Paragraph 44.

20 45. Paragraph 45 contains conclusions of law as opposed to allegations of
21 fact and, accordingly, no answer is required. To the extent that Paragraph 45
22 purports to contain any allegations of fact, WellPoint denies the allegations
23 contained in Paragraph 45.

24 46. Paragraph 46 contains conclusions of law as opposed to allegations of
25 fact and, accordingly, no answer is required. To the extent that Paragraph 46
26 purports to contain any allegations of fact, WellPoint denies the allegations
27 contained in Paragraph 46.
28

1 47. Paragraph 47 contains conclusions of law as opposed to allegations of
2 fact and, accordingly, no answer is required. To the extent that Paragraph 47
3 purports to contain any allegations of fact, WellPoint denies the allegations
4 contained in Paragraph 47.

5 48. Paragraph 48 contains conclusions of law as opposed to allegations of
6 fact and, accordingly, no answer is required. To the extent that Paragraph 48
7 purports to contain any allegations of fact, WellPoint denies the allegations
8 contained in Paragraph 48.

9 49. Paragraph 49 contains conclusions of law as opposed to allegations of
10 fact and, accordingly, no answer is required. To the extent that Paragraph 49
11 purports to contain any allegations of fact, WellPoint denies the allegations
12 contained in Paragraph 49.

13 50. There are no factual allegations set forth in Paragraph 50 and,
14 accordingly, no response is required. To the extent a response is required,
15 WellPoint admits that Plaintiff seeks relief. WellPoint denies the remaining
16 allegations in Paragraph 50.

17 51. There are no factual allegations set forth in Paragraph 51 and,
18 accordingly, no response is required. To the extent a response is required,
19 WellPoint admits that Plaintiff seeks relief. WellPoint denies the remaining
20 allegations in Paragraph 51.

21 52. There are no factual allegations set forth in Paragraph 52 and,
22 accordingly, no response is required. To the extent a response is required,
23 WellPoint admits that Plaintiff seeks relief. WellPoint denies the remaining
24 allegations in Paragraph 52.

25
26 **SECOND CAUSE OF ACTION**

27 53. WellPoint incorporates the answers contained in the previous
28 paragraphs of this Answer as if fully set forth herein.

1 54. There are no factual allegations set forth in Paragraph 54 and,
2 accordingly, no response is required. To the extent a response is required,
3 WellPoint admits that Plaintiff seeks to bring a claim to recover allegedly unpaid
4 overtime wages. WellPoint denies the remaining allegations in Paragraph 54.

5 55. Paragraph 55 contains conclusions of law as opposed to allegations of
6 fact and, accordingly, no answer is required.

7 56. Paragraph 56 contains conclusions of law as opposed to allegations of
8 fact and, accordingly, no answer is required.

9 57. Paragraph 57 contains conclusions of law as opposed to allegations of
10 fact and, accordingly, no answer is required.

11 58. WellPoint denies the allegations contained in Paragraph 58.

12 59. WellPoint denies the allegations contained in Paragraph 59.

13 60. Paragraph 60 contains conclusions of law as opposed to allegations of
14 fact and, accordingly, no answer is required. To the extent that Paragraph 60
15 purports to contain any allegations of fact, WellPoint denies the allegations
16 contained in Paragraph 60.

17 61. WellPoint denies the allegations contained in Paragraph 61.

18 62. Paragraph 62 contains conclusions of law as opposed to allegations of
19 fact and, accordingly, no answer is required. To the extent that Paragraph 62
20 purports to contain any allegations of fact, WellPoint denies the allegations
21 contained in Paragraph 62.

22 63. WellPoint denies the allegations contained in Paragraph 63.

23 64. Paragraph 64 contains conclusions of law as opposed to allegations of
24 fact and, accordingly, no answer is required. To the extent that Paragraph 64
25 purports to contain any allegations of fact, WellPoint denies the allegations
26 contained in Paragraph 64.

27 65. WellPoint denies the allegations contained in Paragraph 65.
28

1 66. WellPoint denies the allegations contained in Paragraph 66.

2 67. WellPoint denies the allegations contained in Paragraph 67.

3 68. Paragraph 68 contains conclusions of law as opposed to allegations of
4 fact and, accordingly, no answer is required. To the extent an answer is required,
5 WellPoint admits that Plaintiff seeks relief. To the extent that Paragraph 68
6 purports to contain any allegations of fact, WellPoint denies the allegations
7 contained in Paragraph 68.

8 **THIRD CAUSE OF ACTION**

9 69. WellPoint incorporates the answers contained in the previous
10 paragraphs of this Answer as if fully set forth herein.

11 70. Paragraph 70 contains conclusions of law as opposed to allegations of
12 fact and, accordingly, no answer is required.

13 71. Paragraph 71 contains conclusions of law as opposed to allegations of
14 fact and, accordingly, no answer is required. To the extent that Paragraph 71
15 purports to contain any allegations of fact, WellPoint denies the allegations
16 contained in Paragraph 71.

17 72. Paragraph 72 contains conclusions of law as opposed to allegations of
18 fact and, accordingly, no answer is required. To the extent that Paragraph 72
19 purports to contain any allegations of fact, WellPoint denies the allegations
20 contained in Paragraph 72.

21 **FOURTH CAUSE OF ACTION**

22 73. WellPoint incorporates the answers contained in the previous
23 paragraphs of this Answer as if fully set forth herein.

24 74. Paragraph 74 contains conclusions of law as opposed to allegations of
25 fact and, accordingly, no answer is required.

26 75. Paragraph 75 contains conclusions of law as opposed to allegations of
27 fact and, accordingly, no answer is required.
28

1 76. Paragraph 76 contains conclusions of law as opposed to allegations of
2 fact and, accordingly, no answer is required.

3 77. Paragraph 77 contains conclusions of law as opposed to allegations of
4 fact and, accordingly, no answer is required. To the extent that Paragraph 77
5 purports to contain any allegations of fact, WellPoint denies the allegations
6 contained in Paragraph 77.

7 78. Paragraph 78 contains conclusions of law as opposed to allegations of
8 fact and, accordingly, no answer is required.

9 79. WellPoint denies the allegations contained in Paragraph 79.

10 80. There are no factual allegations set forth in Paragraph 80 and,
11 accordingly, no response is required. To the extent a response is required,
12 WellPoint admits that Plaintiff seeks relief. WellPoint denies the remaining
13 allegations in Paragraph 80.

14 **FIFTH CAUSE OF ACTION**

15 81. WellPoint incorporates the answers contained in the previous
16 paragraphs of this Answer as if fully set forth herein.

17 82. Paragraph 82 contains conclusions of law as opposed to allegations of
18 fact and, accordingly, no answer is required. To the extent that Paragraph 82
19 purports to contain any allegations of fact, WellPoint denies the allegations
20 contained in Paragraph 82.

21 83. Paragraph 83 contains conclusions of law as opposed to allegations of
22 fact and, accordingly, no answer is required. To the extent that Paragraph 83
23 purports to contain any allegations of fact, WellPoint denies the allegations
24 contained in Paragraph 83.

25 84. Paragraph 84 contains conclusions of law as opposed to allegations of
26 fact and, accordingly, no answer is required.

1 85. Paragraph 85 contains conclusions of law as opposed to allegations of
2 fact and, accordingly, no answer is required.

3 86. Paragraph 86 contains conclusions of law as opposed to allegations of
4 fact and, accordingly, no answer is required.

5 87. Paragraph 87 contains conclusions of law as opposed to allegations of
6 fact and, accordingly, no answer is required. To the extent that Paragraph 87
7 purports to contain any allegations of fact, WellPoint denies the allegations
8 contained in Paragraph 87.

9 88. WellPoint denies the allegations contained in Paragraph 88.

10 89. Paragraph 89 contains conclusions of law as opposed to allegations of
11 fact and, accordingly, no answer is required. To the extent that Paragraph 89
12 purports to contain any allegations of fact, WellPoint denies the allegations
13 contained in Paragraph 89.

14 90. WellPoint denies the allegations contained in Paragraph 90.

15 91. Paragraph 91 contains conclusions of law as opposed to allegations of
16 fact and, accordingly, no answer is required. To the extent that Paragraph 91
17 purports to contain any allegations of fact, WellPoint denies the allegations
18 contained in Paragraph 91.

19 92. Paragraph 92 contains conclusions of law as opposed to allegations of
20 fact and, accordingly, no answer is required. To the extent that Paragraph 92
21 purports to contain any allegations of fact, WellPoint denies the allegations
22 contained in Paragraph 92.

23 93. Paragraph 93 contains conclusions of law as opposed to allegations of
24 fact and, accordingly, no answer is required. To the extent that Paragraph 93
25 purports to contain any allegations of fact, WellPoint denies the allegations
26 contained in Paragraph 93.
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1 94. There are no factual allegations set forth in Paragraph 94 and,
2 accordingly, no response is required. To the extent a response is required,
3 WellPoint admits that Plaintiff seeks relief. WellPoint denies the remaining
4 allegations in Paragraph 94.

5 **PRAYER FOR RELIEF**

6 WellPoint denies, generally and specifically, that Plaintiff or any putative
7 class member has been damaged in the amounts alleged, or in any amount at all, by
8 reason of any act, omission or other conduct on the part of WellPoint, or on the
9 part of WellPoint's agents, representatives, or employees. WellPoint further
10 denies, generally and specifically, that Plaintiff and the proposed class members
11 are entitled to the relief sought in the Complaint or the Prayer, or any other relief
12 sought whatsoever. WellPoint generally denies any allegations of Plaintiff's
13 Complaint not specifically admitted herein.

14 **ADDITIONAL DEFENSES**

15 In further answer to Plaintiff's Complaint, WellPoint alleges the following
16 additional defenses. In asserting these defenses, WellPoint does not assume the
17 burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

18 **FIRST DEFENSE**

19 **(Failure To State a Cause of Action)**

20 1. As to Plaintiff's Complaint, or any purported cause of action therein
21 alleged, Plaintiff fails to state facts sufficient to constitute claims upon which relief
22 can be granted against WellPoint.

23 **SECOND DEFENSE**

24 **(Statute of Limitations)**

25 2. Plaintiff's claims, in whole or in part, are barred by the applicable
26 statutes of limitations.

THIRD DEFENSE

(Estoppel)

3. Plaintiff, by his conduct, is estopped to assert any cause of action against WellPoint.

FOURTH DEFENSE

(Waiver)

4. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of waiver.

FIFTH DEFENSE

(Unclean Hands)

5. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

SIXTH DEFENSE

(Laches)

6. Plaintiff has delayed inexcusably and unreasonably in the filing of this action causing substantial prejudice to WellPoint and, thus, Plaintiff's claims are barred by the equitable doctrine of laches.

SEVENTH DEFENSE

(Good Faith Dispute)

7. Plaintiff is not entitled to any Labor Code section 203 waiting time penalties because a good faith dispute exists as to the monies allegedly owed, such that WellPoint cannot be held to have willfully failed to comply with the requirements of California Labor Code sections 201 and/or 202.

EIGHTH DEFENSE

(Non-Certifiable Class)

8. As to Plaintiff's Complaint, or any purported cause of action therein alleged, Plaintiff fails to state facts, and is unable to state facts, sufficient to certify a class and this action is not properly brought as a class or collective action.

NINTH DEFENSE

(Inadequate Representative)

9. Plaintiff is not an adequate representative of any class that he seeks to represent in this action.

TENTH DEFENSE

(Not Wages for Purposes of Overtime Laws)

10. Plaintiff has no right to recover for alleged unpaid overtime wages to the extent that the alleged payments are not "wages" and need not be included in the regular rate of pay to calculate the proper rate of pay for overtime wages.

ELEVENTH DEFENSE

(No Recovery Under UCL)

11. Plaintiff improperly seeks through his cause of action under Business & Professions Code section 17200 (the "UCL") to recover monies that are not recoverable under the UCL, to the extent Plaintiff brings Labor Code section 203 claims under the UCL.

TWELFTH DEFENSE

(No Injury)

12. Plaintiff's claim for penalties pursuant to California Labor Code §226 fails because neither he nor any of the putative class members has suffered any injury as a result of the challenged statutory violation.

THIRTEENTH DEFENSE

(Good Faith - Fifth Cause of Action)

13. WellPoint's acts or omissions complained of in the Complaint were done in good faith and WellPoint had reasonable grounds for believing that its actions or omissions were not in violation of applicable laws and thus any such actions or omissions are subject to the provisions of 29 U.S.C. § 260.

FOURTEENTH DEFENSE

(Compensation Credits - Fifth Cause of Action)

14. WellPoint has paid Plaintiff extra statutory premium compensation, entitling it to a credit against FLSA liability otherwise owed.

FIFTEENTH DEFENSE

(Arbitration)

15. To the extent that Plaintiff entered into any arbitration agreements with WellPoint, all claims against WellPoint are subject to arbitration.

PRAYER

WHEREFORE, WellPoint prays for judgment as follows:

1. That Plaintiff take nothing by his unverified Complaint;
2. That judgment be entered in favor of WellPoint and against Plaintiff on all causes of action;
3. That WellPoint be awarded reasonable attorneys' fees according to proof;
4. That WellPoint be awarded the costs of suit incurred herein; and
5. That WellPoint be awarded such other and further relief as the Court may deem just and proper.

1 DATED: September 24, 2012

Respectfully submitted,

2 SEYFARTH SHAW LLP

3
4 By: /s/ Reiko Furuta

Reiko Furuta

Attorneys for Defendant

5 THE WELLPOINT COMPANIES,
6 INC.